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JAMES S. HUN
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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES DISTRICT COURT		
SOUTHERN DISTRICT OF OHIO		
WESTERN DIVISION		
ROBERT McFEETER,	:	CASE NO. C-1-01-900
	:	(Beckwith, J.; Hogan, M.J.)
PLAINTIFF,	:	
	:	
vs:	:	<u>JOINT PRETRIAL</u>
	:	<u>STATEMENT</u>
CITY OF MIDDLETOWN	:	
POLICE DEPARTMENT, et al.,	:	
	:	
DEFENDANTS.	:	
	:	

This action came before the Court at a final pretrial conference held on November 10, 2004, at 12:00 Noon, pursuant to Rule 16, Federal Rules of Civil Procedure.

I. APPEARANCES:

For Plaintiff: James D. Ruppert
Joshua G. Burns

For Defendants: Konrad Kircher

II. NATURE OF ACTION AND JURISDICTION:

A. This is an action for compensatory and punitive damages for alleged violation of 42 U.S.C.A. Sections 1983, 1985 and 1986, and under Ohio Civil Assault and Battery laws.

B. The jurisdiction of the Court is invoked under Title 42 United States Code Section 1983, 1985 and 1986.

C. The jurisdiction of the Court is not disputed.

III. TRIAL INFORMATION

A. The estimated length of trial is four (4) days.

B. Trial to jury has been set for December 6, 2004, pursuant to the General Notice on Trial Assignment.

IV. AGREED STATEMENTS AND LISTS:

A. General Nature of the Claims of the Parties

1. PLAINTIFF CLAIMS:

Plaintiff asserts in Count 1 a right of recovery for defendants' deprivation of Plaintiff's due process and equal protection rights by use of excessive force upon the Plaintiff while in the custody of law enforcement officers in violation of 42 U.S.C. Section 1983.

Plaintiff asserts in Count 2 a right of recovery for defendants' deprivation of Plaintiff's due process and equal protection rights by their conspiracy to cover up the above stated incident and by failing to report this incident to superiors or authorities in violation of 42 U.S.C. Section 1985.

Plaintiff asserts in Count 3 a right of recovery for defendants' deprivation of plaintiff's due process and equal protection rights for failing to intervene in the acts set forth above despite an ability to do so in violation of 42 U.S.C. Section 1986.

Plaintiff asserts in Count 4 a right of recovery for defendants' wanton and willful misconduct in hitting, kicking and striking him without consent to do so in violation of Ohio state laws regarding assault and battery.

Plaintiff asserts in Count 5 a right to punitive damages and attorney fees for the following reasons: The defendants' actions were intentional, wanton, malicious and repressive in depriving the Plaintiff of his due process and equal protection rights by using excessive force upon him while in police custody, conspiring to cover up these actions, and in failing to intervene in the conduct of such actions, all in violation of 42 U.S.C. Sections 1983, 1985 and 1986, and in violating Ohio state laws regarding civil assault and battery.

2. DEFENDANT CLAIMS:

Defendants deny that there was any use of excessive force by these Defendants or by any other employee of Middletown.

B. Uncontroverted Facts

The following facts are established by admissions in the pleadings or by stipulations of counsel:

- Mr. McFeeter was arrested by Middletown Police Department Officers James Lusk and Kathy Jones on New Year's Eve 2000.
- Mr. McFeeter was in the Middletown City Jail from New Year's Eve 2000 until the morning of January 1, 2001, upon his release.
- Mr. McFeeter was alone in a holding cell at Middletown City Jail during his entire stay at the jail. No other inmates were in Mr. McFeeter's cell.
- The only persons in Mr. McFeeter's cell during his entire stay were Officers Spicer, Kathy Jones and Kenneth Mynhier.
- Mr. McFeeter did not attempt to assault or harm any officer at any time.
- Mr. McFeeter was admitted to Sycamore Hospital on January 1, 2001, and was then transferred to Kettering Medical Center for emergency surgery.
- Mr. McFeeter remained hospitalized from January 1st to January 7th, 2001.

C. Issues of Fact and Law

1) The contested issues of fact remaining for decision are:

- Whether Plaintiff sustained his injuries while at the Middletown City Jail.
- Whether the defendant officers caused the injury to the Plaintiff.
- Whether 1 or more of the Defendants failed to prevent an assault on Mr. McFeeter despite having the ability to do so.
- Whether 2 or more of the Defendants conspired to cover up an assault and injuries to Mr. McFeeter.
- Whether 2 or more of the Defendants conspired to fail to report an assault on Mr. McFeeter.

2) Contested Issues of Law:

There are no special issues of law reserved other than those implicit in the foregoing issues of fact.

D. Witnesses

1) Plaintiff may call or may have available at trial:

- Plaintiff Robert McFeeter – Plaintiff will testify as to all issues and events pertaining to the claims which he has filed in this action.
- Robert E. McFeeter – Mr. McFeeter will testify as to issues pertaining to Plaintiff's condition and activities both prior to arrest as well as after his release from the Middletown City Jail.

- Tina F. Spicer – Ms. Spicer will testify as to issues pertaining to Plaintiff's condition and activities both prior to arrest as well as after his release from the Middletown City Jail.
- Marlin Hill – Mr. Hill will testify as to issues pertaining to Plaintiff's release from the Middletown City Jail.
- Nick Gottschall – Mr. Gottschall will testify as to issues pertaining to Plaintiff's damages and lost wages.
- Officer James Brammer (as if on cross-examination) – Mr. Brammer will testify as to issues pertaining to events involving Plaintiff taking place at the Middletown City Jail and jail policy.
- Officer Greg Ortel (as if on cross-examination) – Mr. Ortel will testify as to issues pertaining to events involving Plaintiff taking place at the Middletown City Jail and jail policy.
- Officer James Lusk (as if on cross-examination) – Mr. Lusk will testify as to issues pertaining to Plaintiff's arrest and subsequent events in the Middletown City Jail.
- Officer Mary Jones (as if on cross-examination) – Ms. Jones will testify as if upon cross-examination as to all issues and events pertaining to the claims pending against Kenneth Mynhier, John Spicer, Mary Jones and herself.
- Dr. John P. Maguire, M.D. – Dr. McGuire will testify regarding his care and treatment rendered, including diagnosis made during Mr. McFeeter's admission from 1/1/01 – 1/7/01 and subsequent follow-up, including expert opinion of the cause of said injuries.
- Dr. Frances E. Barnes, M.D. – Dr. Barnes will testify regarding the amount of force that would be required to result in the type of injuries sustained by Mr. McFeeter and that Plaintiff's injuries are not consistent with the type of injuries sustained in a trip and fall.

2) Defendant may call or have available at trial:

- Those witnesses identified by Plaintiff.
- Defendants Kathy Jones, Kenneth Mynhier and John Spicer, who will testify about Plaintiff's arrest, Plaintiff's conduct in the jail, and any other circumstances relating to Plaintiff's claims.
- James Brammer, Mary Jones, April Landrum, Robert Landrum, Matthew Landrum and Robert McFarland, who will testify about the circumstances leading to Plaintiff's arrest

3) The parties reserve the right to call rebuttal witnesses who testimony cannot reasonably be anticipated without prior notice to opposing counsel.

E. Expert Witnesses

The parties are limited to the following number of expert witnesses, including treating physicians, whose names have been disclosed and reports furnished to opposing counsel:

Plaintiff: John P. Maguire, M.D.
Frances E. Barnes, M.D.

Defendant: None

Counsel have attached a resume of each expert's qualifications as a part of Appendix A, herein.

F. Exhibits

Lists attached as follows:

Appendix B: Joint Exhibits
Appendix C: Plaintiff Exhibits
Appendix D: Defendant Exhibits

G. Depositions

Testimony of the following witnesses will be offered by deposition in video tape form:

Plaintiff Witness: Dr. John P. Maguire, M.D.

H. Discovery

Discovery has been completed.

I. Pending Motions

There are no pending motions at this time.

J. Miscellaneous Orders

There are no miscellaneous orders at this time.

V. MODIFICATION

This Final Pretrial Statement may be modified at the trial of this action, or prior thereto, to prevent manifest injustice. Such modification may be made by application of counsel or on motion of the Court.

VI. JURY INSTRUCTIONS AND TRIAL BRIEFS

Trial briefs shall be filed with the Clerk of Courts FIVE DAYS prior to the commencement of trial.

Jury instructions shall be filed with the Clerk of Courts SEVEN DAYS prior to the Final Pretrial Conference.

VII. SETTLEMENT EFFORTS

The parties have made efforts to negotiate a settlement and discussions are ongoing. Plaintiff's latest demand was \$150,000.00. Defendant's latest offer was \$40,000.00.

VIII. ADDITIONAL ACTION TAKEN

There has been no additional action taken at this time.

Date

/s/ Joshua G. Burns
Counsel for Plaintiff

(per authorization 11/3/04)
Counsel for Defendant

Curriculum Vitae (7-99)

NAME John P. Maguire, M.D.

ADDRESS Office - 3533 Southern Blvd. Suite 2250, Kettering, OH 45429
Home - 3877 Upper Bellbrook Rd., Bellbrook, OH 45305

MARITAL STATUS Married - Judy Maguire
2 children - Jennifer & Julie

COLLEGE Walla Walla College, Walla Walla, Washington
1965-1969 B.A. Mathematics

MEDICAL COLLEGE Loma Linda University, Loma Linda, California
April 1973, M.D.

INTERNSHIP Kettering Memorial Hospital, Kettering, OH
1973-1974

RESIDENCY Kettering Memorial Hospital, Kettering, OH
General Surgery 1974-1978

MEDICAL PRACTICES South Dayton Surgeons, Inc.
3533 Southern Blvd., Suite 2250
Kettering, OH 45429
January, 1994 - Present

Solo Practice
2600 Far Hills Avenue
Dayton, OH 45419
April, 1990 - December 1993

Practice with George Lechner, M.D.
2130 Leiter Road
Miamisburg, OH 45342
July, 1986 - March, 1990

Hermiston, Oregon
July, 1978 - June, 1986

MEMBERSHIPS Montgomery County Medical Society
Dayton Surgical Society
Ohio State Medical Association
American Medical Association
American College of Surgeons
American Society for Bariatric Surgery
Midwest Surgical Association

**ACADEMIC
POSITIONS**

Associate clinical Professor of Surgery
Wright State University - Fairborn, OH
1986 - present

**HOSPITAL STAFF
PRIVILEGES**

Kettering Memorial Hospital
Kettering, OH - Active
Sycamore Hospital
Miamisburg, OH - Active
Franciscan Medical Center
Dayton, OH - Resigned 5-20-2000
Miami Valley Hospital
Dayton, OH - Courtesy
Grandview/Southview Hospitals
Dayton, OH - Courtesy

**PROFESSIONAL
APPOINTMENTS**

Medical Director
New Life Surgery Center 1998 - Present
Chief of Clinical Department of Surgery
Kettering Memorial Hospital, 1997 - Present
Chairman, Surgery Committee
Kettering Memorial Hospital, 1990 - Present
President Dayton Surgical Society
1996-1997
Vice-Chief of Surgery
Kettering Memorial Hospital, 1993-1996
Chairman of Surgery Sub-Committee
Kettering Memorial Hospital, 1993-1994
Member Quality Assurance Committee
Kettering Memorial Hospital 1989-1994
Secretary of Dayton Surgical Society
Dayton, OH 1994
Chairman of Tissue Transfusion Committee
Kettering Memorial Hospital, 1989-1990
Chairman of Surgery Committee
Good Shepherd Hospital, Hermiston, Oregon
Chief of Staff
Good Shepherd Hospital, Hermiston, Oregon

HOBBIES

Photography
Woodworking
Computers

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FRANCIS E. BARNES, MD, F.A.C.S.
GENERAL SURGERY

3360 TREMONT RD COLUMBUS, OHIO 43221

TELEPHONE 442-8801

FAX 442-8803

CURRICULUM VITAE OF FRANCIS E. BARNES, M.D., F.A.C.S.

BORN - Tillsonburg, Ontario, Canada 1938

PRIMARY EDUCATION - Aylmer, Ontario, Canada 1944 - 1954

PREMEDICAL EDUCATION - University of Western Ontario 1954 - 1956

MEDICAL SCHOOL - University of Western Ontario 1956 - 1960 M.D.

INTERNSHIP - 1960 - 1961 - Rotating - Victoria Hospital, London, Ontario
1961 - 1962 - Surgical - Grant Hospital, Columbus, Ohio

RESIDENCY - Marquette University - combined Surgical Residency
Program 1962 - 1966
Chief Resident - Milwaukee, Wisconsin 1966 - 1967

BOARD CERTIFIED - American Board of Surgery 1967
American College of Surgeons 1971 Fellow - F.A.C.S.

PRACTICE - Columbus, Ohio 1967 to present
300 E. Town Street General & Peripheral Vascular Surgery

LICENSED - Ohio, Wisconsin, Ontario

HOSPITAL APPOINTMENTS -

Active Staff - Grant Hospital, Columbus, Ohio
Active Staff - Mt. Carmel Hospital, Columbus, Ohio
Active Staff - St. Ann's Hospital, Westerville, Ohio
Courtesy Staff - Ohio State University Hospital, Columbus, Ohio

FACULTY APPOINTMENTS -

Clinical Instructor in Surgery, Marquette University 1966 - 1967
Clinical Instructor in Surgery, Ohio State University 1972 to present

PROFESSIONAL SOCIETIES -

Academy of Medicine of Columbus & Franklin County
Columbus Surgical Society, President - 1989
Ohio State Medical Association
American College of Surgeons
American College of Surgeons, Ohio Chapter
American Society of Outpatient Surgeons
Society of Laparoscopic Surgeons
Hungarian Medical Association of America
American Hernia Society - Charter Member

CURRICULUM VITAE OF FRANCIS E. BARNES, M.D., F.A.C.S.

COUNCIL APPOINTMENTS - PAST

Council Member - Academy of Medicine
Council Member - Columbus Surgical Society

COMMITTEE APPOINTMENTS - PAST

Grant Hospital: Chairman, Department of Surgery
Grant Hospital: Surgical Care Appraisal Committee
Grant Hospital: Chairman, Utilization Review Committee
Grant Hospital: Emergency Room Committee
Grant Hospital: Executive Committee
Grant Hospital: Joint Conference Committee
Grant Hospital: Chairman, Operating Room Committee
Grant Hospital: Medical Forms Committee
Grant Hospital: President, Medical Staff
Grant Hospital: Chairman, Trauma Committee
Grant Hospital: Director, Trauma Services
Grant Hospital: Director, Utilization Review
Grant Hospital: Quality Assurance Committee
Mt. Carmel Hospitals: Surgical Care Appraisal Committee
Mt. Carmel Hospitals: Utilization Review Committee
Mt. Carmel Hospitals: Emergency Room Committee
St. Ann's Hospital: Utilization Review Committee
St. Ann's Hospital: Quality Assurance Committee
Ohio Health Choice Plan: Medical Advisory Board

**APPENDIX B
[JOINT EXHIBIT LIST]**

- 1 RECORD OF ARREST – MIDDLETOWN POLICE DEPARTMENT
12/31/00**
- 2 POLICE NARRATIVE/STATISTICS OF OFFENSE**
- 3 MIDDLETOWN POLICE/MIDDLETOWN JAIL MEDICAL RECORD
REGARDING ROBERT McFEETER**
- 4 REPORT OF CORRECTIONS OFFICER GREG ORTEL**
- 5 MIDDLETOWN CITY POLICE DEPARTMENT VIDEOTAPE 12/31/00**
- 6 REPORT FROM CORRECTIONS OFFICER MARY JONES 1/17/01**
- 7 REPORT FROM PATROLMAN KATHY JONES 1/13/01**
- 8 REPORT FROM C.O. SPICER 1/12/01**
- 9 REPORT FROM OFFICER LUSK 2/1/01**
- 10 REPORT FROM C.O. JAMES L. BRAMMER 1/18/01**
- 11 REPORT FROM PTL. KENNETH MYNHIER 2/3/01**
- 12 BOOKING PHOTO OF ROBERT S. MCFEETER**
- 13 MIDDLETOWN DIVISION OF POLICE ASSAULT AND USE OF FORCE
REPORT (12/31/00)**
- 14 MIDDLETOWN CITY JAIL OFFICER ACTIVITY SHEET 12/31/00**

**APPENDIX C
[PLAINTIFF'S EXHIBIT LIST]**

- 1 SYCAMORE HOSPITAL EMERGENCY**
- 2 KETTERING MEMORIAL HOSPITAL ADMISSION RECORDS**
 - A) INPATIENT FACE SHEET, HISTORY/PHYSICAL, CONSULT, DISCHARGE SUMMARY**
 - B) PHYSICIANS ORDERS/PROGRESS NOTES**
 - C) NURSES PROGRESS NOTES**
 - D) OPERATIVE REPORT/RECORDS**
 - E) RADIOLOGY, LABS, MEDICATION**
- 3 KETTERING MEMORIAL HOSPITAL OUTPATIENT CLINIC**
- 4 JOHN P. MAGUIRE, M.D. RECORDS**
- 5 ITEMIZATION OF DOCUMENTED SPECIALS**
- 6 KETTERING MEDICAL CENTER BILLS**
- 7 EMERGENCY MEDICINE SPECIALISTS, INC. BILL**
- 8 KETTERING RADIOLOGISTS, INC. BILL**
- 9 JOHN P. MAGUIRE, M.D. /SOUTH DAYTON SURGEON, INC. BILL**
- 10 KETTERING ANESTHESIA ASSOCIATES BILL**
- 11 SOUTH DAYTON ACUTE CARE CONSULTANTS BILL**
- 12 LOST WAGE DOCUMENTATION FROM SK CONSTRUCTION**
- 13 PHOTOGRAPHS OF ROBERT MCFEETER TAKEN AT KETTERING MEMORIAL HOSPITAL ON 1-5-01 (8 Photographs)**
- 14 PHOTOGRAPHS OF MIDDLETOWN CITY JAIL CELL**

APPENDIX D
[DEFENDANT'S EXHIBIT LIST]

1 AUDIOTAPE OF PLAINTIFF